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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Service Rules for the 746-764 and	)	**WT Docket No. 99-168**
776-794 MHz Bands, and	)	
Revisions to Part 27 of the	)	
Commission's Rules	)	

COMMENTS OF SOUTHERN COMMUNICATIONS SERVICES, INC.

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Dated: July 19, 1999

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COMMENTS OF SOUTHERN COMMMUNICATIONS SERVICES, INC.

Southern Communications Services, Inc., d/b/a Southern LINC® ("Southern"), through its undersigned counsel, and pursuant to Section 1.415(b) of the Federal Communications Commission's rules, 47 C.F.R. § 1.415(b), hereby submits comments in response to the FCC's Notice of Proposed Rulemaking in the above-captioned proceeding.[1] The Commission has allocated 36 MHz of spectrum used as television channels 60-62 and 65-67 for fixed, mobile and broadcast services.[2] The Commission requests comment on proposed service rules for the commercial licensing of this spectrum. For the reasons stated below, the Commission should specifically designate 18 MHz of this spectrum for the provision of SMR service.

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1 Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket 99-168, *Notice of Proposed Rulemaking*, FCC 99-97 (1999) ("*NPRM*").

2 Reallocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket No. 97-157, Report and Order, 12 FCC Rcd 22953 (1998) (*Reallocation Report and Order*).

BACKGROUND

Southern operates a digital, wide area SMR system classified as a CMRS under Commission regulations. It is the largest centrally switched, state-of-the-art digital 800 MHz SMR system in the world, with an authorized service area of more than 127,000 square miles. Sheriffs departments, emergency management agencies, school systems and businesses large and small—well over 100,000 users in all—daily rely on the Southern LINC® 800 MHz SMR system for critical communications.

Southern's wide-area SMR system employs Motorola's Integrated Digital Enhanced Network ("iDEN") technology,[3] a digitally enhanced, time division multiple access technology. This technology allows the transmission of six sets of voice communications simultaneously on a single channel, and central processing of the communications for efficient spectrum use. Southern's system provides voice dispatch service as well as full duplex telephone interconnect, and short message service (similar to alphanumeric paging). Southern also provides the latest technology for mobile Internet access. Throughout Southern's service area, Southern customers can have the ability to access Internet and municipal and corporate intranet based services, including e-mail, news, weather, travel directions etc. Each of these functions can be accessed by using a single mobile or handheld radio unit.

Southern provides advanced digital CMRS to the public in urban areas as well as rural areas overlooked by other CMRS providers, and has been providing commercial

[3] The identical technology is being used by Nextel. To date, this is the only commercially available digital 800 MHz SMR technology.

service on the system since February 1996. Southern's system provides true wide-area coverage, including coverage in the most rural areas of the South.

This is particularly important to the public safety community that Southern serves. Southern is committed to continuing to provide its entire service area with an advanced communications system that meets the unique needs of public utilities, federal, state, and local governments and emergency management agencies, including law enforcement and ambulance services.[4] However, Southern and other SMR entities need access to additional spectrum in order to provide these invaluable services.

DISCUSSION

The Commission has requested comment on whether service rules should permit a licensee to use the spectrum at issue for any use permitted—fixed, mobile or broadcast—and how innovative service rules could be used for this spectrum. The Commission has tentatively concluded that permitting flexible use under Part 27 of the Commission's rules[5] will "contribute to technological and service innovation, the creation of new jobs for the American workforce, the fostering of national economic growth, and the enhancement of opportunities for all Americans to utilize, and realize the benefits of, the national telecommunications infrastructure."[6]

Permitted Services

Southern supports the Commission's tentative finding and recommends that the

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[4] In the immediate aftermath of Hurricane Opal, Southern's system was the only telephone service operating in parts of the Alabama and Florida coast where wireline and cellular service were disabled.

[5] 47 C.F.R. § 27.1 *et seq.*

Commission adopt rules permitting flexible use for half of the spectrum at issue. Southern maintains, however, that an analysis of the public interest pursuant to Section 303(y)(2)(A)[7] compels the designation of the remaining 18 MHz of spectrum exclusively for SMR use.[8] Mobile telecommunications are meeting an increasingly greater share of society's telecommunications needs,[9] and, as the Commission has noted, there is significant demand for digital interconnected dispatch service and traditional analog dispatch-only service.[10] Designating spectrum exclusively for SMR use is therefore in the public interest.

As demonstrated by the Southern LINC® system, advanced SMRs are uniquely suited to serve the needs of Public Safety entities for extremely reliable dispatch and interconnected service.[11] Southern's system provides interoperability among participating public safety agencies, which the Commission has recognized as one of the most important

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6 *NPRM* ¶ 12.

7 47 U.S.C. § 303(y)(2)(A).

8 As explained below, Public Safety use should be permitted on all 36 MHz, notwithstanding the proposed designation of 18 MHz for SMR use. Southern recommends that this spectrum be licensed on an Economic Area basis in two blocks of one MHz and two blocks of eight MHz. If, as Southern recommends, the spectrum is subjected to the liberal partition/disaggregation rules of 47 C.F.R. § 27.1 *et seq.*, the exact size of the spectrum blocks is not critical. However, smaller SMR providers should have access to spectrum blocks of one to two MHz. *See Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, First Report and Order*, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, PR Docket 93-144, 11 FCC Rcd 1463, ¶ 37, FCC 95-501 (1995).

9 Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 193, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, pp. 48-49, FCC 99-136, *Fourth Report*, (June 24, 1999) ("*1999 Competition Report*").

10 *1999 Competition Report* at 5.

11 For example, the Wireless Telecommunications Bureau cited as a "unique circumstance" the "provision of service over an unusually large area to a substantial number of public safety users. *Southern Company Request for Waiver of Section 90.629 of*

public safety needs.[12] This "most important public safety need" however, is not necessarily adequately reflected in the market valuation of spectrum assets; hence Congress' decision to set aside spectrum for Public Safety users and to exempt that spectrum from auction.[13]

Southern notes that the reallocation of channels 60 through 69 includes designation of spectrum for the exclusive use of Public Safety entities. As demonstrated by the success of the Southern LINC® system, however, there are many instances where taking service on a commercial system, tailored to meet the needs of public safety entities and businesses, is a more attractive option than financing, constructing and operating a system. As the Commission has determined, dispatch service constitutes a distinct market[14] and spectrum allocated to cellular and PCS does not satisfy the demand for service in this distinct market.[15] Accordingly, as described below, because there is a severe shortage of spectrum to serve the dispatch market, it is in the public interest for the Commission to designate spectrum to be auctioned for SMR use. This allows the Commission to ensure that a commercial service for this distinct market has adequate access to spectrum.

Designation of 18 MHz for SMR Service Will Promote Competition. The Commission is faced with unique competitive concerns in the SMR market.[16] As the

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the Commission's Rules, Order, DA 98-2496 (WTB 1998).

12 *Id.* ¶ 13.

13 47 U.S.C. § 337.

14 In re Applications of Pittencrieff Communications, Inc., Transferor, and Nextel Communications, Inc., Transferee, For Consent to Transfer Control of Pittencrieff Communications, Inc., and its Subsidiaries, *Memorandum Opinion and Order*, DA 97-2260, ¶ 42 (WTB 1997) ("*Pittencrieff*").

15 *Pittencrieff* ¶ 57.

16 The Commission is obliged to assess the effect of its policies upon competitive conditions within the relevant markets. *Motor Vehicle Mfrs. Ass'n. v. State Farm Mut.*

Commission determined in the *1999 Competition Report*, the commercial dispatch industry experienced a 48 percent growth in subscribership in 1998[17] compared with a 1.23 percent increase in average penetration for cellular.[18] The Commission also noted that "the overall structure of the SMR industry is more concentrated than other CMRS sectors,[19] with Nextel Communications, Inc. (Nextel) controlling almost 70 per cent of all SMR subscribers.[20] Nextel's control of the dispatch/interconnect market is even greater, with that provider controlling more than 22 times the market share of its nearest competitor.[21] Not surprisingly, the Commission also noted that Nextel "continues to record the highest ARPU [average revenue per unit] levels in the mobile telephone industry...."[22]

Designating 18 MHz of additional spectrum for SMR service will open spectrum to competitive providers and thus reduce market concentration and reduce prices for consumers. Such designation would still leave the entire SMR market with only 28 MHz of spectrum not subject to substantial incumbency--significantly less spectrum than is available for cellular or PCS. Eighteen MHz is sufficient to ensure that equipment providers will have an incentive to develop state-of-the-art SMR equipment for the 700 MHz band, and that economies of scale can be passed on to consumers in a competitive market.

Auto Ins. Co., 463 U.S. 29, 43 (1983).

17 *1999 Competition Report* at 48.

18 *Id.* at 29.

19 *Id.* at 48.

20 *Id.* at 48.

21 *See Id.* at 48

22 *1999 Competition Report* at 32.

Designating equal amounts of spectrum for SMR use and for flexible use also balances the desire to encourage innovation against the uncertainty associated with flexible use. As Congress observed, such uncertainty "could ultimately retard the development of new services and technologies."[23]

Licensing Rules

Southern supports the application of the Part 27 licensing framework to the 746-764 MHz and 776-794 MHz bands with the following exceptions: 1) as explained above, 18 MHz should be designated for SMR use and subject to Part 90 of the Commission's rules;[24] and 2) all the spectrum should be counted toward the CMRS spectrum cap. [25]

CMRS Spectrum Cap. Frequency characteristics in the 700 MHz band make it particularly desirable for CMRS applications. Attributing this spectrum toward the 45 MHz CMRS spectrum cap is consistent with the Commission's goal in establishing the cap: to "discourage anticompetitive behavior."[26] Any of the 36 MHz at issue that is used to provide CMRS should be so attributed. As the Commission has noted, the spectrum cap is a "minimally intrusive means of ensuring that the mobile communications marketplace remains competitive and retains incentives for efficiency and innovation."[27]

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23 H.R. Rep. No. 105-149, 581 (1997), *reprinted in* 1997 U.S.C.C.A.N. 176, 201.

24 47 C.F.R. §90.1 *et seq.* Receive frequencies (746-764 MHz) and transmit frequencies (776-794 MHz) should be separated by 30 MHz, similar to the 45 MHz separation of 800 MHz SMR frequencies as specified in 47 C.F.R. § 90.613.

25 *CMRS Third Report and Order* ¶ 263.

26 *Id.* ¶ 251.

27 *CMRS Third Report and Order* ¶ 238.

Public Safety Eligibility. Southern supports the Commission's tentative conclusion that all of the spectrum at issue should be open to application by public safety entities under the same rules applied to commercial applicants. Similarly, the spectrum should be available for the relocation of public safety entities, and they should be eligible to license partitioned geographic areas or disaggregated spectrum on the same terms as any other entity. Such a policy will facilitate the exchange of spectrum between Public Safety Service licensees and CMRS providers, allowing the Public Safety community to rationalize its spectrum holdings and maximize the utility of its spectrum. Flexibility of this nature will be especially important to licensees with site specific licenses that are considering obtaining Economic Area licenses for new or enhanced systems.

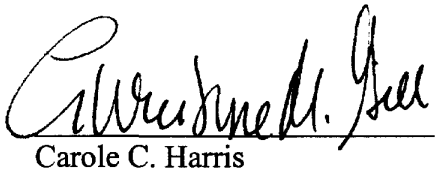
Interference Requirements. Designation of 18 MHz of spectrum for SMR service subject to the interference rules governing geographic licensees in that service[28] will provide the market with certainty regarding the extent of interference protection provided by the Commission's rules, thereby encouraging the development of equipment and the deployment of service.

[28] 47 C.F.R. § 90.621 and § 90.689.

CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, Southern Company urges the Commission to consider these Comments and to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, Christine S. Biso, do hereby certify that on this 19th day of July 1999, a copy of the foregoing "Comments Of Southern Communications Services, Inc." was hand-delivered to each of the following:

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